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Neutral Citation No. - 2025:AHC:13302

Reserved on 20.12.2024

Delivered on 17.01.2025

Court No. - 79

Case :- MATTERS UNDER ARTICLE 227 No. - 11593 of 2024

Petitioner :- Sanjay Kushwaha

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- K.K.Rao,Pradeep Kumar Srinette

Counsel for Respondent :- Ashwani Kumar Pathak,G.A.,R.P.S.
Chauhan,Shailendra Singh

Hon'ble Saurabh Srivastava,J.

1. Heard Sri K.K. Rao, learned counsel for petitioner and Sri R.P.S. Chauhan, learned counsel for respondent no.2 alongwith Sri Ashwani Kumar Pathak, learned counsel for respondent no.3 as well as learned AGA on behalf of State-respondent.

2. By means of present petition, petitioner has challenged order dated 06.08.2024 passed by learned Additional Sessions Judge, Court No.4, Gorakhpur in Criminal Revision No.29 of 2023 and order dated 01.02.2023 passed by City Magistrate, Gorakhpur in Case No.8/13/26/2013/2013-2014, Computerized Case No.D20080531008 (State Vs. Sanjay Kushwaha and others), under Section 133 of Cr.P.C.

3. Brief facts of the present case are that respondent nos.2 and 3 alongwith some other persons preferred an application under Section 133 Cr.P.C. on dated 16.01.2008 before City Magistrate, Gorakhpur alleging that public way has been illegally obstructed by petitioner by way of constructing a wall due to which they are not able to access their houses. Upon the said application, an inquiry was conducted by police concerned and prepared its report as well as site plan on dated

03.02.2008. The said application was registered as Case No.13 of 2008 and on dated 14.02.2008, City Magistrate, Gorakhpur passed *ex-parte* order on the basis of report submitted by the concerned police directing the petitioner to remove the obstruction which was in shape of wall and fixed a date for 12.03.2008 for appearance of petitioner. Being aggrieved with the order dated 14.02.2008, petitioner preferred criminal revision being Criminal Revision No.182 of 2008 (Sanjay Vs. State) which was allowed by learned revisional court by way of setting aside the order dated 14.02.2008 and remanded the matter back to the concerned authority with a direction to pass afresh order after affording proper opportunity to both parties.

5. After passing of the said order of remitting back the matter, petitioner filed his written reply in Case No.13 of 2008 (new Case No.8/13/26/2013/2013-2014) on 28.12.2022 and thereafter, City Magistrate passed impugned order dated 01.02.2023 again directing the petitioner to remove the obstruction and confirmed the order dated 14.02.2008. Being aggrieved with the order dated 01.02.2023, petitioner preferred Criminal Revision No.29 of 2023 which was dismissed by learned Additional Sessions Judge, Court No.4, Gorakhpur vide order dated 06.08.2024 which impugned the present petition.

6. Learned counsel for petitioner submitted that respondent nos.2, 3 and seven other persons purchased residential plot through registered sale deeds by father and uncle of petitioner wherein 15 feet road is available and the allegation as levelled upon petitioner through the application dated 16.01.2008, is on based on wrong facts whereupon impugned orders have been passed. Learned counsel for petitioner further submitted that the disputed land which has been shown as public way by the respondents, pertains to petitioner and also he has not obstructed any public road. It has also been submitted by learned

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counsel for petitioner that the impugned order has been passed only on the basis of false report submitted by police concerned without calling any record and report from the revenue department or making any inquiry regarding status of the disputed land and as such, mandatory provision of Sections 137(2) and 138(2) of Cr.P.C has not been followed prior passing to the impugned order under Section 133 Cr.P.C.

7. Learned counsel for petitioner argued that disputed lands bearing Gata Nos.15, 16 and 17 are not recorded as path/passage in revenue record and despite the police report and site plan, no any evidence is available on record to show that disputed lands are public way. Learned counsel for petitioner further submitted that with regard to disputed lands bearing Gata Nos.15, 16 and 17, a civil suit bearing Original Suit No.566 of 2007 (Gulavati Vs. Chandravati and others) between the parties, is pending before learned Additional Civil Judge (Senior Division), Gorakhpur till today and as such, the impugned orders which have been passed, are illegal in the eye of law.

8. In support of his submission, learned counsel for petitioner relied upon the judgments passed by Coordinate Benches of this Court in the cases of **Arun Kumar and others Vs. State of U.P. and others [2013 (1) ADJ 290]**, **Om Prakash Pandey Vs. State of U.P. and others [2019 (3) ACR 2526]**, **Ram Lakhan Vs. Addl. District and Sessions Judge and others [2016 (1) ACR 734]** and **Krishna Lal Yadav and other Vs. Ram Chandra Yadav and others [2018 (1) JIC 742 (ALL)(LB)]**.

9. Per contra, Sri R.P.S. Chauhan, learned counsel for respondent no.2 alongwith Sri Ashwani Kumar Pathak, learned counsel for respondent no.3 vehemently opposed the prayer as made through the instant petition and rebutted the stand taken up by learned counsel for petitioner by way of submitting that the impugned order dated

01.02.2023 was passed by City Magistrate, Gorakhpur considering the evidences available on record and the same has been passed in the public interest. Learned counsel for respondents further submitted that Nagar Nigam, Gorakhpur itself approved the proposal for construction of road over the disputed lands and also tender has been passed but filing of objection at the behest of petitioner on the basis of pendency of Original Suit No.566 of 2007, the road could not be constructed. It has also been submitted by learned counsel for respondents that the said suit has already been dismissed in default on dated 10.08.2016 wherein restoration application dated 20.12.2022 has been preferred but the same is still pending to be decided, meaning thereby, the order dated 10.08.2016 is in operation.

10. In operation of order dated 10.08.2016 through which Suit no. 566 of 2007 has already been dismissed in default and as per the admitted fact that the respondent nos. 2, 3 and 7 other persons purchased residential plot through registered sale deed which was sold by the father and uncle of the petitioner and wife of respondent no. 2 namely Poonam Singh has also purchased residential plot of uncle of the petitioner namely Raja Ram way back in the year 2007 and the public way available for the purchasers has been duly maintained by the Nagar Nigam, Gorakhpur whereupon certain solving work has been initiated and as per the report, the aforesaid road started from east to west then turns to north connecting with the main road, in the east side of the colony the said road is completely blocked by the petitioner which rises cause of action in favour of the private respondents to initiate proceedings under Section 133 of Cr.P.C. and as per the report, the adjudication made by City Magistrate vide order dated 01.02.2023 is a detailed one by way of indicating factual and documentary evidences and as such the same is justified.

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11. The grounds whatsoever has been taken up while preferring criminal revision no. 29 of 2023 has been properly dealt which culminated into order dated 06.08.2024 through which the finding and reasoning recorded by the City Magistrate, Gorakhpur has been upheld by learned court of Additional Sessions Judge, Court no. 4, Gorakhpur and the same is having no infirmity.

12. In view of the aforementioned facts and circumstances, the present writ petition stands **dismissed**.

Order Date :- 17.1.2025

Vivek Kr./Shaswat

(Saurabh Srivastava, J.)